IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.1605 of 2006

Date of Decision: February 14, 2007

Harbhajan Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.R.S.Bajaj, Advocate,
for the petitioner.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

Mr.S.S.Majithia, Advocate.

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The present case was registered on the statement of one Raj Kumar. As per the allegations, on 24.12.2005 Raj Kumar went to Mandir looking for his father, who had gone there earlier. When he reached Mandir, he did not find his father present there. While returning, he saw Avtar Singh son of Shankar Singh armed with base bat, Jagdish (Harbhajan Singh) armed with chhuri, Kartar Singh armed with chhuri, Manjit Kaur wife of Avtar Singh, Kamaljit

@ Bholi and Parkash Kaur had encircled the father of the complainant and were in the process of causing injuries to him. Having intervened, the complainant shifted his father to the hospital where he breathed his last due to the injuries. After investigation, the prosecution presented a challan only against Vijay Kumar, whereas Jagdish, Kamaljit Kaur and Harbhajan Singh @ Kala were found innocent. During the course of trial, complainant Raj Kumar is examined as a witness and has made a statement, copy of which is at Annexure P-3 with the grounds of revision. On the basis of evidence given by Raj Kumar complainant, the prosecution moved an application for summoning Jagdish, Kamaljit Kaur and Harbhajan Singh @ Kala. The application stands allowed and all the three persons, referred to above, are summoned to face prosecution. Harbhajan Singh has impugned this order summoning him to face trial.

Mr.R.S.Bajaj, the counsel for the petitioner would contend that though the petitioner was named in the FIR, but the complainant while appearing as a witness before the court, has not named him and has otherwise also not attributed any role to him. The counsel points out that initially an application was moved by the prosecution for summoning Jagdish and Kamaljit Kaur and no prayer was made for summoning the petitioner. Subsequently without any further material on record, another application for summoning the petitioner is moved. The counsel submits that there is no material on the basis of which the petitioner could be summoned to face trial. He has relied upon Sanjay Dalmia Vs. State of Haryana, 2005(2) RCR (Criminal) 217 and Lok Raj Vs. Nihal Singh, 2006(2) RCR (Criminal)

707. It is held in these cases that while summoning any person under Section 319 Cr.P.C. to face trial, the role attributed in the FIR can not be taken into consideration and this is required to be done on the basis of evidence or material placed on record before the court.

The factual position that the petitioner is not named in the statement given by the complainant before the court is not disputed by the counsel for the State and the respondent-complainant. The legal position in regard to summoning of a person to face prosecution under the provisions of Section 319 Cr.P.C. is, by now, well settled. The Hon'ble Supreme Court in the case of Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr. 2000(2) R.C.R.(Criminal) 75, has held that though the court has a discretionary power to summon a person as an additional accused to stand trial but it is not to be exercised on the ground that the Court entertained some doubt about his involvement in the offence. To summon a person to face trial under Section 319 Cr.P.C., the court must have reasonable satisfaction from the evidence already collected. In Michael Machado's case (supra), it was held as under:-

> “The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court

must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused."

In this very judgment, Hon'ble Supreme Court also held that what is conferred on the Court is only a discretion and discretionary power so conferred should be exercised only to achieve criminal justice. Supreme Court went on to observe that it is not that a Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. It is said that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then. In the case of Michael Machado's case (supra) a detailed reference was made to the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi & Ors. 1983 (1) RCR (Crl.) 73 by the Court to observe and to strike a note of caution by saying that this is really an extraordinary power, which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. It would be noticeable that Hon'ble Supreme Court in the case of Michael Machado's case (supra) proceeded to hold that unless the court is hopeful that there is reasonable prospects of the case as against newly brought accused ending in conviction of the offence concerned, the Court should refrain from adopting such a course of action. In Krishnappa v. State of Karnataka, 2004 (7) JT

509, Hon'ble Supreme Court while dealing with the powers to summon additional accused has held that the power is an extraordinary power and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom the action has not been taken.

The analysis of the judgment aforementioned would show that discretion regarding summoning a person as an additional accused is not to be exercised in routine. This should be exercised sparingly and when done should be by passing a reasoned order. This Section leaves a discretionary power with the Court and is not to be exercised when some doubt is entertained but should be so done after reasonable circumstances emerge from the evidence already collected. It has also been held that there is no compelling duty on the court to proceed against any person. Suspicion alone is not sufficient to summon the accused and he should be so summoned when there is reasonable prospect of convicting him of the offence charged. As already noticed, Hon'ble Supreme Court has observed that power under this provision is to be exercised to advance the cause of criminal justice.

What to talk of any evidence in the present case, there is no whisper in the statement of the complainant, which can show involvement or can give rise to any suspicion against the petitioner. It can, thus, be safely assumed that there is no reasonable prospect of conviction of the petitioner in this case, which could have prompted the court to exercise this discretionary power to summon the petitioner under Section 319 Cr.P.C. While exercising this discretion, the Sessions Court appears to have ignored the

parameters of law, which are, by now, reasonably settled and reiterated in number of judgments by this court following the law laid down in the case of Michael Machado's case (supra).

Admittedly there is no material on record on the basis of which the petitioner could have been summoned. Accordingly, the impugned order cannot be sustained. The same is set-aside. The revision is accordingly allowed.

It is made clear that the present order would not stand in the way of prosecution to seek summoning of either the petitioner or any other person at any subsequent stage on the basis of a material or evidence that is brought on record and which would go to satisfy the parameter of exercise of this discretionary power under Section 319 Cr.P.C.

February 14, 2007 (RANJIT SINGH)
ramesh JUDGE